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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

CBP Dec. 17-12

RIN 1515-AE32

**Extension of Import Restrictions Imposed on Archaeological and Ethnological
Materials from the Republic of Mali**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security;
Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Customs and Border Protection (CBP) regulations to reflect an extension of import restrictions on certain archaeological materials from Mali. These restrictions, which were originally imposed by Treasury Decision (T.D.) 93-74, and last extended by CBP Decision (Dec.) 12-14, are due to expire on September 19, 2017. The Acting Under Secretary for Public Diplomacy and Public Affairs, United States Department of State, has determined that conditions warrant the continued imposition of import restrictions on certain archaeological materials and the addition of import restrictions on certain ethnological materials from Mali. The Designated List of cultural property described in CBP Dec. 07-77 is revised in this

document to reflect the addition of ethnological materials to include manuscripts dating between the twelfth and twentieth centuries in paper. The import restrictions imposed on the archaeological and ethnological materials from Mali will be in effect for a five-year period, and the CBP regulations are being amended accordingly to reflect this extension through September 19, 2022. These restrictions are being imposed pursuant to determinations of the United States Department of State made under the terms of the Convention on Cultural Property Implementation Act, which implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

DATES: Effective September 19, 2017.

FOR FURTHER INFORMATION CONTACT: For regulatory aspects, Lisa L.

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SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the Convention on Cultural Property Implementation Act (hereafter, “the Cultural Property Implementation Act” or “the Act” (Pub. L. 97-446, 19 U.S.C. 2601 et seq.)), which implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

(hereinafter, the Convention) in U.S. law, the United States may enter into international agreements with another State Party to the Convention to impose import restrictions on eligible archaeological and ethnological materials under procedures and requirements prescribed by the Act.

In certain limited circumstances, the Cultural Property Implementation Act authorizes the imposition of restrictions on an emergency basis (19 U.S.C. 2603(c)(1)). Under the Act and the applicable CBP regulations (19 CFR 12.104g(b)), emergency restrictions are effective for no more than five years from the date of the State Party's request and may be extended for three years where it is determined that the emergency condition continues to apply with respect to the covered materials (19 U.S.C. 2603(c)(3)); such restrictions may also be continued pursuant to an agreement concluded within the meaning of the Act (19 U.S.C. 2603(c)(4)).

On September 23, 1993, under the authority of the Cultural Property Implementation Act, the former U.S. Customs Service published Treasury Decision (T.D.) 93-74 in the *Federal Register* (58 FR 49428) imposing emergency import restrictions on archaeological objects from the region of the Niger River Valley of Mali and the Bandiagara Escarpment (Cliff), Republic of Mali (Mali) and accordingly amended 19 CFR 12.104g(b).

On September 19, 1997, the United States entered into a bilateral agreement with Mali that continued without interruption the import restrictions previously placed on the same archaeological material. On September 23, 1997, the former U.S. Customs Service published T.D. 97-80 in the *Federal Register* (62 FR 49594), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions, and included a list designating

the types of archaeological material covered by the restrictions. (T.D. 97-80 also removed the emergency restrictions for Mali from 19 CFR 12.104g(b).)

Under the Act and applicable U.S. Customs and Border Protection (CBP) regulations (19 CFR 12.104g), the restrictions are effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States (19 U.S.C. 2602(b)). This period may be extended for additional periods, each such period not to exceed five years, where it is determined that the factors justifying the initial agreement still pertain and no cause for suspension of the agreement exists (19 U.S.C. 2602(e); 19 CFR 12.104g(a)). On September 20, 2002, the former U.S. Customs Service published T.D. 02-55 in the *Federal Register* (67 FR 59159), which amended 19 CFR 12.104g(a) to reflect the extension of these import restrictions for an additional period of five years until September 19, 2007.

On September 19, 2007, CBP published CBP Decision (Dec.) 07-77 in the *Federal Register* (72 FR 53414), which amended 19 CFR 12.104g(a) to reflect the extension and amendment of the import restrictions for Mali. The 2007 amendment added import restrictions on new subcategories of objects throughout Mali from the Paleolithic Era (Stone Age) to approximately the mid-eighteenth century in the amended Designated List for an additional period of five years until September 19, 2012.

On September 19, 2012, CBP published CBP Dec. 12-14 in the *Federal Register* (77 FR 58020), which amended 19 CFR 12.104g(a) to reflect the extension of the import restrictions for an additional period of five years until September 19, 2017.

On March 14, 2017, by publication in the *Federal Register* (82 FR 13706), the United States Department of State proposed to extend the Agreement between the United

States and Mali concerning the imposition of import restrictions on archaeological material from Mali from the Paleolithic Era (Stone Age) to approximately the mid-eighteenth century. Pursuant to the statutory and decision-making process, the Designated List of materials covered by the restrictions is being amended to include certain ethnological materials, specifically manuscripts dating between the twelfth and twentieth centuries in paper. Thus, the Agreement now covers both the previously covered archaeological materials, as set forth in the Designated List published in CBP Dec. 07-77, and the additional ethnological materials (see 19 U.S.C. 2604, authorizing the Secretary of the Treasury, by regulation, to promulgate and, when appropriate, revise the list of designated archaeological and/or ethnological materials covered by an agreement between State Parties to the Convention).

On August 7, 2017, the Acting Under Secretary for Public Diplomacy and Public Affairs, United States Department of State, determined that the cultural heritage of Mali continues to be in jeopardy from pillage of certain archaeological materials and is also in jeopardy from the pillage of certain ethnological materials. The Acting Under Secretary made the necessary determination to extend the import restrictions for an additional five-year period to September 19, 2022, and to include in their coverage ethnological materials, specifically manuscripts dating between the twelfth and twentieth centuries in paper. An international agreement has been concluded reflecting the extension of the Agreement and, pursuant to the Agreement, the import restrictions are being extended, as described in this document and as applicable to the revised Designated List set forth in this document. Thus, CBP is amending 19 CFR 12.104g(a) accordingly. Importation of covered materials from Mali will be restricted through September 19, 2022. Importation

of such materials from Mali continues to be restricted through that date unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

In this document, the Designated List of articles that was published in CBP Dec. 07-77 is amended to include ethnological materials comprised of manuscripts dating between the twelfth and twentieth centuries in paper. The articles described in the Designated List set forth below are protected pursuant to the Agreement.

Amended Designated List

This Designated List, amended as set forth in this document, includes archaeological material that originates in Mali, ranging in date from the Paleolithic Era (Stone Age) to approximately the mid-eighteenth century A.D. These materials include, but are not limited to, objects of ceramic, leather, metal, stone, glass, textiles, and wood. The Designated List also includes a certain category of ethnological material, namely manuscripts dating between the twelfth and twentieth centuries in paper. The Designated List and more information on the import restrictions can be obtained from the Mali country section of the International Cultural Property Protection website at <http://exchanges.state.gov/heritage/culprop/mlfact.html>.

The list set forth below is representative only. Any dimensions are approximate.

Archaeological Material (Dating from the Paleolithic Era (Stone Age) to Approximately the Mid-Eighteenth Century)

I. Ceramics/Terra Cotta/Fired Clay

Types of ceramic forms (stylistically known as Djenné-Djeno or Jenne, Bankoni, Guimbala, Banamba, Bougouni, Bura and other stylistic labels) that are known to come from the region include, but are not limited to:

A. Figures/Statues.

1. Anthropomorphic figures, often incised, impressed and with added motifs, such as scarification marks and serpentine patterns on their bodies, often depicting horsemen or individuals sitting, squatting, kneeling, embracing, or in a position of repose, arms elongated the length of the body or crossed over the chest, with the head tipped backwards. (H: 2 to 20 in.)
2. Zoomorphic figures, often depicting a snake motif on statuettes or on the belly of globular vases. Sometimes the serpent is coiled in an independent form. A horse motif is common, but is usually mounted. Includes quadrupeds. (H: 2 to 16 in.)

B. Common Vessels.

1. Funerary jars, ocher in color, often stamped with chevrons. (H: 20 to 32 in.)
2. Globular vases often stamped with chevrons and serpentine forms. (H: under 4 in.)
3. Bottles with a long neck and a belly that is either globular or streamlined. Some have lids shaped like a bird's head.
4. Ritual pottery of the Tellem culture, decorated with a characteristic plaited roulette.
 - a. Pot made on a convex mold built up by coiling.

- b. Hemispherical pots made on three or four legs or feet resting on a stand.
- 5. Kitchen pottery of the Tellem culture with the paddle-and-anvil technique decorated with impressions from woven mats.

II. Leather

Objects of leather found in Tellem funerary caves of the Bandiagara Escarpment include, but are not limited to:

A. Clothing.

- 1. Sandals often decorated and furnished with a leather ankle protection.
- 2. Boots profusely painted with geometric designs.
- 3. Plaited bracelets.
- 4. Knife-sheaths.
- 5. Loinskin.
- 6. Bag.

III. Metal

Objects of copper, bronze, iron, and gold from Mali include, but are not limited to:

A. Copper and Copper Alloy (Such as Bronze).

- 1. Figures/Statues.
 - a. Anthropomorphic figures, including equestrian figures and kneeling figures. (Some are miniatures no taller than 2 inches; others range from 6 to 30 in.)
 - b. Zoomorphic figures, such as the bull and the snake.

2. Bells (H: 4 to 5 in.) and finger bells (H: 2 to 3 in.).
3. Pendants, known to depict a bull's head or a snake. (H: 2 to 4 in.)
4. Bracelets, known to depict a snake (Diameter: 5 to 6 in.).
5. Bracelets, known to be shaped as a head and antelope (Diameter: 3 to 4 in.).
6. Finger rings.

B. Iron.

1. Figures/Statues.
 - a. Anthropomorphic figures. (H: 5 to 30 in.)
 - b. Zoomorphic figures, sometimes representing a serpent. (H: 5 to 30 in.)
2. Headrests of the Tellem culture.
3. Ring-bells or fingerbells of the Tellem culture.
4. Bracelets and armlets of the Tellem culture.
5. Hairpins, twisted and voluted, of the Tellem culture.

IV. Stone

Objects of stone from Mali include, but are not limited to:

- A. Beads in carnelian (faceted) and other types of stone.
- B. Quartz lip plugs.
- C. Funerary stelae (headstones) inscribed in Arabic.
- D. Chipped stone lithics from the Paleolithic and later eras including axes, knives, scrapers, arrowheads, and cores.

- E. Ground Stone from the Neolithic and later eras including axes, adzes, pestles, grinders, and bracelets.

V. Glass Beads

A variety of glass beads have been recovered at archaeological sites in Mali.

VI. Textiles

Textile objects, or fragments thereof, have been recovered in the Tellem funerary caves of the Bandiagara Escarpment and include, but are not limited to:

A. Cotton.

1. Tunics.
2. Coifs.
3. Blankets.

B. Vegetable Fiber.

Skirts, aprons and belts made of twisted and intricately plaited vegetable fiber.

C. Wool.

Blankets.

VII. Wood

Objects of wood may be found archaeologically (in funerary caves of the Tellem or Dogon peoples in the Bandiagara Escarpment, for example). Following are representative examples of wood objects usually found archaeologically:

A. Figures/Statues.

1. Anthropomorphic figures--usually with abstract body and arms raised standing on a platform, sometimes kneeling. (H: 10 to 24 in.)

2. Zoomorphic figures--depicting horses and other animals. (H: 10 to 24 in.)

B. Headrests.

C. Household Utensils.

1. Bowls.
2. Spoons--carved and decorated.

D. Agricultural/Hunting Implements.

1. Hoes and axes--with either a socketed or tanged shafting without iron blades.
2. Bows--with a notch and a hole at one end and a hole at the other with twisted, untanned leather straps for the "string".
3. Arrows, quivers.
4. Knife sheaths.

E. Musical Instruments.

1. Flutes with end blown, bi-toned.
2. Harps.
3. Drums.

Ethnological Material

VIII. Manuscripts

Manuscripts and portions thereof from the Mali Empire, Songhai Empire, pre-Colonial, and French Colonial periods of Mali (twelfth to early twentieth centuries), including but not limited to Qur'ans and other religious texts, letters, treatises, doctrines, essays or other such papers spanning the subjects of astronomy, law, Islam, philosophy, mathematics, governance, medicine, slavery, commerce, poetry, and literature, either as

single leaves or bound as a book (or “codex”), and written in Arabic using the Kufic, Hijazi, Maghribi, Saharan, Sudani, Suqi, Nashk, or Ajami scripts written on paper.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure under 5 U.S.C. 553(a)(1). In addition, CBP has determined that such notice or public procedure would be impracticable and contrary to the public interest because the action being taken is essential to avoid interruption of the application of the existing import restrictions (5 U.S.C. 553(b)(B)). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

Executive Orders 12866 and 13771

This rule is not a significant regulatory action for purposes of Executive Order 12866 or Executive Order 13771.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below.

PART 12 – SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

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Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

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§ 12.104(g) [Amended]

2. In § 12.104g, paragraph (a), the table is amended in the entry for “Mali” by:

a. In the column headed “Cultural Property,” after the word “century” add the following words: “, and ethnological materials dating between the twelfth and twentieth centuries”, and

b. In the column headed “Decision No.,” by removing “12-14” and replacing it with “17-12”.

DATE: September 15, 2017

Ronald D. Vitiello
Acting Deputy Commissioner
U.S. Customs and Border Protection

Approved:

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

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